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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/412,459	10/04/1999	NICHOLAS P. VAN BRUNT	A792.12-0006	9671

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EXAMINER

YU, JUSTINE ROMANG

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 02/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/412,459

Applicant(s)

VAN BRUNT, NICHOLAS P

Examiner

Justine R Yu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2002 and 04 December 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-57 is/are pending in the application.
- 4a) Of the above claim(s) 9 and 10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 11-57 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 5) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/4/02 has been entered.

2. This office action is responsive to the amendment filed on 9/23/02. As directed by the amendment, claims 5, 11, 33, 45, 46, and 52 were amended, and no claim was canceled nor added. Thus, claims 1-57 are presently pending in this application.

Election/Restrictions

3. Claims 9 and 10 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 10.

Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Specification

4. The disclosure is objected to because of the following informalities: On page 1, lines 7-9, the underlines are not understood.

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Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. Claims 25 and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 25, it is not clear how to cause a decrease in volume of lungs of the patient by supplying air pressure to the mouth. Shouldn't be --increase in volume of lungs --?

In claim 27, the term "an effective atmospheric pressure" is indefinite.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 3-5, 7, 8, 11-16, 19, 20, 22, 27, 28, 29, 36-38, 40-57 are rejected under 35 U.S.C. 102(b) as being anticipated by Alferness (4,349,015).

Alferness teaches a CPR apparatus and method including applying an oscillating compressive force to a chest of a patient, the oscillating compressive force having a steady state force component (30, column 4, lines 55-57, and the weight of the plate 14) and an oscillatory component (compressing and decompressing the bellows 10, column 4, lines 34-42); and supplying air pressure to a mouthpiece (column 4, lines 19-22) having a mouthpiece chamber 24, a mouth port 22 including an outlet port (column 4, lines 66-68, and figure 1), and an air supply

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port 20. The air pressure having an oscillating component (column 4, lines 38-42) and a steady state component formed by oxygen or gas pressure (column 4, line 65 to column 5, line 4).

Regarding claim 22, it is inherent that Alferness' device would be able to perform the same steps as claimed when only the steady state air component is applied to the mouth with out compressing the chest.

Regarding claim 50, it is inherent that Alferness' outlet port would be able to provide a drain for fluids.

8. Claims 1, 3-5, 7, 8, 11-16, 19, 20, 22, 27, 36-55 are rejected under 35 U.S.C. 102(b) as being anticipated by Abramov et al (5,806,512).

Abramov teaches a resuscitation method comprising steps of applying an oscillating compressive force which having a steady state force component (weight of the chest cuff 14) and oscillating compression force (the inflation and deflation of the chest cuff), and supplying air pressure to a mouthpieces 38, the air pressure having a steady state air pressure component about 5 cm of H₂O at an end of the exhalation phase and an oscillating air pressure component fluctuating to about 20 cm of H₂O at the end of the inhalation phase (column 4, lines 32-35). Abramov in figures 1, 3 and 4 further shows the mouthpiece chamber 38 having a mouth port 46a, an outlet port (46g, 46h), and an air supply port 40. Abramov has the same structure as claimed and would be able to perform the same method steps.

Regarding claim 44, figure 4 of Abramov shows the port 46g would be able to supply fresh air.

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Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 2, 6, 17, 18, 21, 23-26, 30-35, and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alferness.

Alferness shows all the method limitations of the invention as claimed but does not disclose values of relative pressure. However, such limitations are considered as obvious design choices based on user preference to suit various needs and applications, which are further capable of being accomplished by Alferness.

Response to Arguments

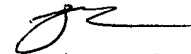
11. Applicant's arguments filed 9/23/02 have been fully considered but they are not persuasive. Applicant on page 10 of the remarks argues that Alferness does not teach having air pressure having an oscillating air pressure component and a steady state air pressure component supplied to the mouthpiece. The examiner disagrees. Alferness clearly teaches an oscillating air pressure component produced by compressing the bellows 10 (figure 1) and steady state air pressure component produced by gas containing or consisting of oxygen from another atmospheric pressure source (column 5, lines 1-4). Thus, Alferness does disclose the recited limitations.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justine R Yu whose telephone number is (703)308-2675. The examiner can normally be reached on 8:30am - 6:00Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on (703)308-2698. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3590 for regular communications and (703)305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.



Justine R Yu
Primary Examiner
Art Unit 3764

JY
February 12, 2003